

In re ) Fair Hearing No. 16,968  
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Appeal of )

The petitioner appeals a decision of PATH that she has been overpaid Food Stamps based on an error in reporting her shelter expenses.

1. The petitioner lives in a house that is rent subsidized by a town housing authority. When the petitioner first applied for Food Stamps in 1994, she reported that she was paying over \$200 to her landlord each month. By May of 1998, the petitioner reported that she was paying \$247 per month. The Department used those figures to calculate the petitioner's food stamp eligibility.

2. The petitioner's reported rent continued at \$247 until May of 2000 at which time the petitioner reported that her rent would increase to \$275 on June 1.

3. In May of 2000, PATH obtained verification from the housing authority of this increase in rent. The verification

stated that the petitioner's rent had actually been \$170 since June of 1999 and was being raised to \$246 as of June of 2000.

4. The petitioner explained to the Department that she had been paying the amounts reported by the housing authority plus additional amounts to her landlord for the rental of personal property, including garden implements, a lawnmower and a freezer. Those amounts started out at \$27 per month and by 1998 had escalated to \$79 per month. The petitioner stated that she felt she had to pay these additional amounts for personal property rental to the landlord as a condition for renting the property. The petitioner presented a letter from her landlord to the housing authority that confirmed this breakdown of payments between shelter and personal property rentals. The petitioner believed she could claim all of the money she paid to the landlord for living in the house.

5. PATH readjusted the petitioner's shelter deduction using only the rent for the shelter reported by the housing authority and disallowing the payments made for personal property. The petitioner's food stamps were reduced prospectively based on this adjustment. PATH then began a review of payments made during the last twelve months.

6. In November of 2000, the petitioner reported that her rent was raised to \$350. That figure also included money

paid to the landlord for personal property which had increased further. A new worker, unfamiliar with the prior problem, entered that amount as her shelter rent without verifying it with the housing authority. A couple of months later, a supervisor noticed the problem and contacted the housing authority which reported that the rent remained at \$246 per month.

7. On January 31, 2001, some six months after the discovery of the original overpayment, the Department notified the petitioner that it had determined that she had a Food Stamp overpayment from May of 1999 through April of 2000 based on her report of a higher shelter expense than was verified by the housing authority. She was also advised that she had been underpaid for November of 2000 and again overpaid during December of 2000 and January and February of 2001 due to a failure by the Department to use the correct figures in its calculation. The total net overpayment was \$732.

8. The petitioner does not take issue with the Department's calculation of the overpayment amount. Rather she argues that PATH should have told her about the overpayment when it was first discovered so she could have been paying on it during the last year. She also believes that the allotment mistakes made by the Department after

November should not be repayable by her since she did not cause the error.

9. The Department does not claim that the petitioner was dishonest in her reports. The confusion arose because the landlord was charging her amounts that were not part of the housing authority approved contract rent in the guise of the rental of personal property.

ORDER

The decision of the Department that the petitioner has been overpaid \$732 in Food Stamps which is subject to recoupment procedures is affirmed.

REASONS

PATH's regulations governing the Food Stamp program make recovery of overpaid Food Stamp amounts mandatory. F.S.M. 273.18(a). This is true whether the overpayment occurred due to an inadvertent household error (such as failure to provide the correct information) or administrative error (such as failure to take timely action on information in PATH's possession). F.S.M. 273.18(a). The regulations also require PATH to take action on all overpayment claims that are within

twelve months of the date the error was discovered.

273.18(b).

In this case, the petitioner was receiving Food Stamps to which she was not entitled since 1994 when she first reported an erroneous amount paid as rent. The regulations make it clear that only amounts paid for the shelter itself can be counted toward the shelter allowance. F.S.M. 273.9(d)(5). There is no provision for counting the rental of personal property in the shelter allowance. PATH failed to verify the amount of the shelter rent with the housing authority and only discovered the error in May of 2000. Thereafter, PATH began an investigation of Food Stamp benefits paid to the petitioner in the past twelve months, since May of 1999, to determine if overpayments had occurred. No attempt was made to recover for the five previous years. The petitioner was made aware, as well, that her benefits would decrease prospectively because the verified rent figures provided by the housing authority had to be used.

Before the petitioner could be provided with an accounting of the overpayment, new errors were made based on both the petitioner's continued reporting of rental figures that did not match those charged by the housing authority and the Department's failure to pick up the discrepancies. The

matter was not finally sorted out until January of 2001 when the petitioner was notified in writing of the overpayment.

The petitioner argues that she should have been notified sooner of the overpayment. There are no regulations which dictate how soon notice must go out after the discovery of an error, but clearly it must be within a time period that allows the petitioner an opportunity to contest the underlying facts. Eight months went by before the petitioner obtained the final accounting of the overpayment. This is a long time and the delay was not explained by the Department. However, the petitioner did not present any evidence that she was prejudiced by this delay. She still clearly had the facts at her command as to what figures she reported to the Department for rent back to 1999 and why she had made these reports. It is true, as the petitioner argues, that she could have been repaying the overpayment last year instead of this one if she had known earlier.<sup>1</sup> However, the petitioner does not show why it would be more of a hardship for her to repay these amounts through recoupment this year as opposed to last year. For these reasons, it must be concluded that PATH correctly established an overpayment of Food Stamps dating back to May

of 1999 and that it has the right and obligation to collect on those overpaid benefits through future recoupments.

It must be noted that the petitioner appears to have been placed in an untenable position with regard to her shelter payments. The petitioner claims she did not want to make extra payments for personal property but felt she had to in order to keep her home. It is quite credible that a low-income person would be reluctant to pay almost 50% more in rent in order to rent a few items of personal property. It is not clear whether the housing authority approved of this arrangement. It is clear that "side-deals" for the payment of extra rent are prohibited under housing authority contracts. The petitioner is strongly urged to contact the housing authority to see whether her side-rental agreement was permitted and, if not, whether she might have any recourse against the landlord for the extra money paid.

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<sup>1</sup> Recoupments, whether based on household or administrative error, are recouped at a rate of ten per cent per month from the food stamp benefits. F.S.M. § 273.18(g)(4).